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15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 US BANK NATIONAL ASSOCIATION,

18 Plaintiff,

19 vs.

20 FIDELITY NATIONAL TITLE GROUP,  
INC., et al.,

21 Defendants.  
22

Case No.: 2:21-cv-01454-JCM-NJK

**MOTION TO STAY CASE**

23 Defendants Fidelity National Title Group, Inc. and Fidelity National Title Insurance  
24 Company (collectively, "Defendants"), by and through their undersigned counsel from Sinclair  
25 Braun LLP and Early Sullivan Wright Gizer & McRae LLP, hereby move to stay the instant  
26 action pending the final disposition of *Wells Fargo Bank, N.A. v. Fidelity National Title Ins. Co.*,  
27 Ninth Cir. Case No. 19-17332 (District Court Case No. 3:19-cv-00241-MMD-WGC), where the  
28 Ninth Circuit has scheduled oral argument to occur on October 20, 2021. Defendants bring the

1 instant motion on the grounds that the appeal in that case involves the judicial interpretation of  
2 similar contractual provisions as those at issue in the instant case under nearly identical  
3 circumstances. As such, the anticipated decision of the Ninth Circuit Court of Appeals could  
4 potentially be case-dispositive of the instant dispute (and thus could radically affect the need for  
5 otherwise-costly discovery in this case, as well as avoid the unnecessary expenditure of judicial  
6 resources on pending and possible future motions).

7 Dated: August 16, 2021

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10 By: /s/-Scott E. Gizer  
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14 Dated: August 16, 2021

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

As the District Court is well aware from its own docket, this is one of dozens of nearly-identical cases pending in the District of Nevada between national lenders (for example, Wells Fargo, U.S. Bank, Deutsche Bank, and HSBC), on the one hand, and their title insurers (for example, North American Title, Fidelity, Chicago Title, Commonwealth Land Title, and Old Republic National Title), on the other hand. While there are some discrete factual nuances to each of these cases,<sup>1</sup> the basic fact pattern in each case is ostensibly the same: the bank or its predecessor made a home mortgage loan secured by a deed of trust. The title insurer underwrote a policy of title insurance in favor of the original lender at the time that the deed of trust was recorded. Years later, the borrower(s) fell behind on his, her, or their HOA assessments. The HOA foreclosed on its assessment lien. The bank tendered a title insurance claim, which was denied. The bank then sued for breach of the insurance policy and insurance bad faith. The instant case brought by plaintiff U.S. Bank National Association (“U.S. Bank”) against defendants Fidelity National Title Group, Inc. and Fidelity National Title Insurance Company (collectively, “Defendants”) follows the same basic fact pattern. (*See* ECF No. 1-1, ¶¶ 44-45, 53-57, 65-76.)

As the District Court is also well aware from the dozens of stipulations it has entered staying many of these cases,<sup>2</sup> the Ninth Circuit is currently entertaining an appeal that may resolve the central insurance coverage question presented by this case, *Wells Fargo Bank, N.A. v. Fidelity National Title Ins. Co.*, Ninth Cir. Case No. 19-17332 (the “*Wells Fargo II Appeal*”).

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<sup>1</sup> For example, in some cases the lender sued the winning bidder at the HOA foreclosure sale. In other cases, the winning bidder sued the lender. In some cases, the lender tendered the super-priority lien amount or attempted to tender the super-priority lien amount. In other cases, it did not. In some cases, the lender prevailed in the underlying litigation against the winning bidder. Other cases settled. And, in other cases, the third-party buyer defeated the lender.

<sup>2</sup> Indeed, this Court has granted contested motions to stay in several of these HOA lien disputes, oftentimes staying the case before briefing on the motions to stay had concluded, including *The Bank of New York Mellon Trust Company v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-cv-1394-JCM-BNW, ECF No. 63 in that action; *Deutsche Bank National Trust Company v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-cv-02268-JCM-VCF, ECF No. 47 in that action (stay granted prior to an opposition being filed); *U.S. Bank National Association v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-cv-00537-JCM-BNW, ECF No. 19 in that action (stay granted prior to a reply being filed).

That case involves the interpretation of the 1992 form of the American Land Title Association (“ALTA”) loan policy of title insurance, as well as the ALTA 9/CLTA 100 and the ALTA 5/CLTA 115.2 endorsement. This case involves that exact same form insurance policy with those same endorsements. Defendants respectfully submit that the forthcoming Ninth Circuit decision could potentially impact the disposition of this case, including greatly impacting the forthcoming motions to dismiss which Defendants intend to file, to say nothing of the effect such a decision may have on the scope of necessary (or potentially unnecessary) discovery in this case. For example, if the Ninth Circuit finds that the Policy does not afford coverage for claims like those asserted by Wells Fargo in the *Wells Fargo II* Appeal and like those asserted by U.S. Bank in this case, then there would be no need for *any* costly depositions, expert reports, or other discovery in this case, and the instant action may be disposed of by way of a simple motion to dismiss. Obviously, if the Ninth Circuit provides guidance on the meaning of the relevant statutory and contractual provisions, then that guidance will likely control across all of these cases. Stated differently, if the Ninth Circuit interprets the relevant statutes and contract provisions, it seems unlikely that the “losing” side (i.e., lender or insurer) would have a compelling argument that the statute or form contract “means something different” in this case. It simply makes more sense to “wait and see” what the Ninth Circuit says in the *Wells Fargo II* Appeal before undertaking the expense of this briefing, for which Ninth Circuit determination may be case dispositive.

## **II. THE COURT HAS INHERENT POWER TO STAY THIS CASE**

The power to stay proceedings is incidental to the inherent power in every court to control the disposition of its cases in the interests of efficiency and fairness to the court, counsel, and litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). “The exertion of this power calls for the exercise of sound discretion.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). A district court has discretion to stay proceedings pending an appeal of another action pursuant to its own inherent authority to manage its docket. *See Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (“A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.”). Further, a district

1 court “has broad discretion to decide whether a stay is appropriate to ‘promote economy of time  
2 and effort for itself, for counsel, and for litigants.’” *Asis Internet Services v. Active Response Grp.*,  
3 2008 WL 4279695, at \*3-4 (N.D. Cal. 2008) (citations omitted).

4 In determining whether to stay a case, courts must weigh “competing interests which will  
5 be affected by the granting or refusal to grant a stay[.]” *Lockyer v. Mirant Corp.*, 398 F.3d 1098,  
6 1110 (9th Cir. 2005) (citing *CMAX*, 300 F.2d at 268). These competing interests include: “... the  
7 possible damage which may result from the granting of a stay, the hardship or inequity which a  
8 party may suffer in being required to go forward, and the orderly course of justice measured in  
9 terms of the simplifying or complicating of issues, proof, and questions of law which could be  
10 expected to result from a stay.” *Id.* (citing *CMAX*, 300 F.2d at 268).

11 As set forth in the above section I, given the nature of these disputes (i.e., they all largely  
12 hinge on the interpretation of form insurance policies), it appears inevitable that the Ninth Circuit  
13 will speak on issues in *Wells Fargo II* that will bear upon the disposition of this case. If this case  
14 is not stayed, then the parties will likely expend considerable resources and time completing  
15 dispositive motions, undertaking fact and expert discovery, and then briefing additional  
16 dispositive motions that will likely be impacted by whatever the Ninth Circuit says in *Wells*  
17 *Fargo II*. It makes basic economic sense to “wait and see” what the Ninth Circuit does in *Wells*  
18 *Fargo II* before the Defendants and U.S. Bank incur these substantial fees completing motions or  
19 discovery, as it is obvious that the “winning side” in the appeal is then going to argue that the  
20 appellate decision controls the disposition of this case, the “losing side” in the appeal will argue  
21 the opposite, and either the District Court or the Court of Appeals will necessarily have to decide  
22 that issue (depending upon how far this case advances before the appellate decision in *Wells*  
23 *Fargo II* is issued).

24 Turning to the *Lockyer* factors, the first factor (i.e., possible damage that may result from  
25 the granting of stay) weighs in favor of staying the instant case, as there is no appreciable damage  
26 that will inure to either side from a stay. Defendants anticipate that U.S. Bank will argue that it is  
27 eager for its day in court, and that it will be “prejudiced” if there is any kind of delay in this  
28 proceeding. This is the “usual refrain” of every plaintiff, and there is nothing special in this case

1 that would set U.S. Bank apart from every other plaintiff that asserts it is impatient to see the  
 2 inside of the courtroom.<sup>3</sup> In reality, this is a relatively-small dollar dispute between two large  
 3 financial institutions. Neither party will suffer any kind of “hardship” by deferring to the  
 4 efficiency of waiting for the *Wells Fargo II* Appeal to be decided.

5 For the same reason, the second *Lockyer* factor (i.e., the hardship or inequity which a party  
 6 may suffer in being required to go forward) also weighs in favor of a stay. In every single one of  
 7 these cases, the lender seeks to recover its attorneys’ fees. Unnecessarily running up fees on  
 8 motion practice and discovery will only exacerbate the dispute in each case, to say nothing of the  
 9 burden imposed upon the dozens of third parties that have been and will be subpoenaed in all of  
 10 these cases (many of which may be required to appear for deposition). Because it is obvious that  
 11 one party or the other will try to argue that the *Wells Fargo II* appellate decision will ultimately  
 12 control the disposition of this case, there is no good reason to incur fees and costs on discovery  
 13 and motion practice that will necessarily need to be supplemented after the Ninth Circuit speaks.

14 Finally, the last *Lockyer* factor (i.e., the orderly course of justice measured in terms of the  
 15 simplifying or complicating of issues, proof, and questions of law which could be expected to  
 16 result from a stay) weighs in favor of staying this case. For better or worse, one side (lender or  
 17 title insurer) will likely find itself arguing that the *Wells Fargo II* appellate decision should  
 18 control this massive body of cases, such that judicial economy (i.e., for the sake of preserving  
 19 limited judicial resources) also weighs in favor of a stay.

### 20 **III. THE MAJORITY OF THESE CASES HAVE ALREADY BEEN ORDERED** 21 **STAYED**

22 There are approximately 100 of these cases between title insurers and lenders currently  
 23 pending in the District of Nevada. The overwhelming majority have been stayed, almost entirely  
 24 by stipulation of the parties (while a handful of the loan servicers that direct the prosecution of  
 25 these cases on behalf of the banks are simply “stragglers” against the trend). These stayed cases  
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27  
 28 <sup>3</sup> Fidelity National Title Insurance Company withdrew coverage for U.S. Bank’s claim on  
 July 26, 2017. (ECF No. 1-1, ¶ 74.) The instant lawsuit was not filed until July 26, 2021.

1 include:

- 2 • *Wilmington Trust v. Commonwealth Land Title Insurance Co.*, Case No. 2:18-cv-02023-GMN-BNW (Ordered Stayed on December 12, 2019);
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- 4 • *Deutsche Bank v. Fidelity National Title Group, et al.*, Case No. 2:19-cv-00220-RFB-DJA (Ordered Stayed on November 26, 2019);
- 5 • *HSBC Bank USA v. Fidelity National Insurance Co., et al.*, Case No. 2:19-cv-00228-APG-NJK (Ordered Stayed on January 17, 2020);
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- 7 • *Wells Fargo Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 3:19-cv-00237-LRH-WGC (Ordered Stayed on November 27, 2019);
- 8 • *U.S. Bank v. North American Title Insurance Co.*, Case No. 2:19-cv-00289-APG-NJK (Ordered Stayed on February 20, 2020);
- 9
- 10 • *HSBC Bank v. Fidelity National Title Insurance Co.*, Case No. 2:19-cv-00333-RFB-BNW (Ordered Stayed on November 26, 2019);
- 11 • *Christiana Trust v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00385-JAD-VCF (Ordered Stayed on December 10, 2019);
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- 13 • *Deutsche Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00409-GMN-VCF (Ordered Stayed on December 13, 2019);
- 14 • *U.S. Bank v. North American Title Insurance Co.*, Case No. 2:19-cv-00424-JAD-EJY (Ordered Stayed on February 25, 2020);
- 15
- 16 • *U.S. Bank, N.A. v. North American Title Insurance Co.*, Case No. 2:19-cv-00433-JAD-BNW (Ordered Stayed on March 3, 2020)
- 17 • *Deutsche Bank v. North American Title Insurance Co.*, Case No. 2:19-cv-00434-APG-VCF (Ordered Stayed on January 24, 2020);
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- 19 • *Wilmington Trust v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00449-APG-GWF (Ordered Stayed on November 27, 2019);
- 20 • *U.S. Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00498-APG-EJY (Ordered Stayed on November 27, 2019);
- 21
- 22 • *Deutsche Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00576-JCM-DJA (Ordered Stayed on December 5, 2019);
- 23 • *U.S. Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00584-JCM-NJK (Ordered Stayed on November 26, 2019);
- 24
- 25 • *Deutsche Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00621-RFB-NJK (Ordered Stayed on November 26, 2019);
- 26 • *Deutsche Bank v. Chicago Title Insurance Co., et al.*, Case No. 3:19-cv-00649-RCJ-CLB (Ordered Stayed on December 23, 2019);
- 27
- 28 • *Deutsche Bank v. Commonwealth Land Title Insurance Co.*, Case No. 2:19-cv-00761-GMN-DJA (Ordered Stayed on December 6, 2019);



- 1 • *Wells Fargo Bank v. Commonwealth Land Title Insurance Co.*, Case No. 2:19-cv-00803-GMN-EJY (Ordered Stayed on November 27, 2019);
- 2 • *U.S. Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00808-RFB-EJY (Ordered Stayed on November 26, 2019);
- 3 • *U.S. Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-00809-GMN-BNW (Ordered Stayed on December 13, 2019);
- 4 • *Deutsche Bank v. Fidelity National Title Group, et al.*, Case No. 2:19-cv-00924-GMN-NJK (Ordered Stayed on December 4, 2019);
- 5 • *Wilmington Savings Fund Society v. Fidelity National Title Insurance Co.*, Case No. 2:19-cv-00959-JCM-VCF (Ordered Stayed on November 26, 2019);
- 6 • *U.S. Bank v. Fidelity National Title Insurance Co.*, Case No. 2:19-cv-00970-KJD-BNW (Ordered Stayed on November 27, 2019);
- 7 • *Wells Fargo Bank v. North American Title Insurance Co.*, Case No. 2:19-cv-01111-RFB-VCF (Ordered Stayed on February 8, 2020);
- 8 • *U.S. Bank Trust v. Old Republic National Insurance Co.*, Case No. 2:19-cv-01136-APG-BNW (Ordered Stayed on December 18, 2019);
- 9 • *U.S. Bank v. North American Title Insurance Co.*, Case No. 2:19-cv-01154-RFB-EJY (Ordered Stayed on February 10, 2020);
- 10 • *Deutsche Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-01487-JCM-EJY (Ordered Stayed on November 26, 2019);
- 11 • *Bank of New York Mellon v. Fidelity National Title Group, et al.*, Case No. 2:19-cv-01566-APG-BNW (Ordered Stayed on December 18, 2019);
- 12 • *Bank of New York Mellon v. Commonwealth Land Title Insurance Co.*, Case No. 2:19-cv-01601-GMN-DJA (Ordered Stayed on December 6, 2019);
- 13 • *U.S. Bank v. Chicago Title Insurance Co.*, Case No. 2:19-cv-01728-GMN-VCF (Ordered Stayed on January 3, 2020);
- 14 • *Christiana Trust v. North American Title Insurance Co.*, Case No. 2:19-cv-01782-APG-BNW (Ordered Stayed on January 31, 2020);
- 15 • *Christiana Trust v. North American Title Insurance Co.*, Case No. 2:19-cv-01868-APG-VCF (Ordered Stayed on February 5, 2020);
- 16 • *Wells Fargo Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:19-cv-01874-RFB-BNW (Ordered Stayed on February 10, 2020);
- 17 • *Wilmington Savings Fund Society v. North American Title Insurance Co.*, Case No. 2:19-cv-02209-APG-EJY (Ordered Stayed on February 18, 2020);
- 18 • *The Bank of New York Mellon v. Old Republic National Title Insurance Company*, Case No. 2:20-cv-00024-JAD-BNW (Ordered Stayed on March 3, 2020); and
- 19 • *Christiana Trust v. Fidelity National Title Insurance Co., et al.*, Case No. 2:20-cv-00115-KJD-DJA (Ordered Stayed on February 10, 2020);



- 1 • *U.S. Bank v. Fidelity National Title Insurance Co., et al.*, Case No. 2:20-cv-00380-GMN-EJY (Ordered stayed on March 16, 2020);
- 2
- 3 • *HSBC Bank v. Fidelity National Title Insurance Co., et al.* Case No. 2:20-cv-00419-KJD-VCF (Ordered Stayed on April 13, 2020);
- 4
- 5 • *Bank of New York Mellon v. Chicago Title Insurance Company, et al.*, Case No. 2:20-cv-00500-JCM-VCF (Ordered Stayed on April 15, 2020).
- 6
- 7 • *Bank of America, N.A., v. Fidelity National Title Group, Inc., et al.*, Case No. 3:20-CV-00046-MMD-WGC (Ordered Stayed on December 23, 2020);
- 8
- 9 • *Bank of New York Mellon v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00127-GMN-EJY (Ordered Stayed on December 4, 2020);
- 10
- 11 • *Deutsche Bank National Trust Company v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-01886-GMN-BNW (Ordered Stayed on March 29, 2021).
- 12
- 13 • *MetLife Home Loans LLC v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-01798-GMN-VCF (Ordered Stayed on March 30, 2021).
- 14
- 15 • *Wells Fargo Bank, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-01887-RFB-EJY (Ordered Stayed on March 30, 2021).
- 16
- 17 • *U.S. Bank National Association v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-01955-KJD-VCF (Ordered Stayed on March 30, 2021).
- 18
- 19 • *Deutsche Bank National Trust Company v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-01920-KJD-BNW (Ordered Stayed on March 30, 2021).
- 20
- 21 • *Wells Fargo Bank, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-02254-APG-BNW (Ordered Stayed on March 31, 2021).
- 22
- 23 • *Wells Fargo Bank, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-02156-APG-NJK (Ordered Stayed on March 25, 2021).
- 24
- 25 • *JPMorgan Chase Bank N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-02188-APG-BNW (Ordered Stayed on March 3, 2021).
- 26
- 27 • *Deutsche Bank National Trust Company v. Fidelity National Title Group, Inc., et al.*, Case No. 2:20-CV-02355-GMN-NJK (Ordered Stayed on March 25, 2021).
- 28
- *Bank of America, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00353-KJD-NJK (Ordered Stayed on April 23, 2021).
- *Bank of America, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00348-GMN-BNW (Ordered Stayed on April 28, 2021).
- *Bank of New York Mellon v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00350-GMN-BNW (Ordered Stayed on April 14, 2021).
- *CitiMortgage, Inc. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00352-GMN-EJY (Ordered Stayed on April 12, 2021).
- *Bank of America, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00349-JCM-DJA (Ordered Stayed on April 26, 2021).

- 1 • *Bank of New York Mellon v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00351-APG-DJA (Ordered Stayed on April 12, 2021).
- 2
- 3 • *U.S. Bank National Association v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00388-JAD-EJY (Ordered Stayed on April 16, 2021).
- 4
- 5 • *Bank of New York Mellon v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00397-APG-DJA (Ordered Stayed on April 22, 2021).
- 6 • *Bank of America, N.A. v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00399-JAD-NJK (Ordered Stayed on April 22, 2021).
- 7 • *Wilmington Trust, National Association v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00406-JAD-VCF (Ordered Stayed on April 22, 2021).
- 8
- 9 • *U.S. Bank, National Association v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-cv-00453-JAD-NJK (Ordered Stayed on April 20, 2021).
- 10 • *Bank of New York Mellon v. Fidelity National Title Group, Inc., et al.*, Case No. 2:21-CV-00452-RFB-VCF (Ordered Stayed on April 22, 2021).
- 11

12 It is clear that, time and again, the various judges of this District Court (including the  
 13 instant Court) have determined that it simply makes more sense to stay cases of this ilk in order to  
 14 see how the Ninth Circuit rules in *Wells Fargo II*. This not only redounds to the benefit of the  
 15 Parties (by sparing them the expenses associated with completing discovery while a potentially  
 16 case-dispositive appeal works its way through the Ninth Circuit), but it spares the Judges of this  
 17 Judicial District from unnecessarily expending limited judicial resources on these cases that might  
 18 be controlled by forthcoming appellate precedent. As the instant case is subject to the same  
 19 considerations as the stayed cases noted above, the same logic should apply here and the instant  
 20 case stayed pending the Ninth Circuit's ruling in the *Wells Fargo II* Appeal.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, Defendants respectfully move this Court to stay this case  
3 in its entirety pending the resolution of the *Wells Fargo II* Appeal.

4 Dated: August 16, 2021

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10 Dated: August 16, 2021

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